IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4394 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

A S SINDHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4394 of 1999

MR JA ADESHRA for Petitioner No. 1

MR N.D.GOHIL, AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 09/09/2003

ORAL JUDGEMENT

Heard learned advocate Mr. J.A.Adeshra for the petitioner and learned AGP Mr. N.D.Gohil appearing on behalf of the respondent.

2. In the present petition, petitioner has challenged the order of punishment dated 20.2.1999 wherein a fine of Rs. 5000/- has been imposed to recover from the salary of the petitioner.

3. The brief facts of the petition according to the petitioner are that; in December, 1981 one Mr. K.Nanjudia who was working as Executive Engineer in Dharoi Canal Division No.1, Visnagar placed an order for purchase of 865 M.Tonnes of imported cement through Gujarat State Ware Housing Corporation, who was the handling agent. The payment was also made by Mr. Nanjudia. The cement in question had arrived at Porbandar in December, 1981. That Mr. K.Nanjudia instead of waiting for the railway wagon to come from Porbandar to Visnagar, got the said imported cement transported through private transport by road and had paid Rs.1,46,834.00 for the transportation charges. That on 20.3.1982 Mr. K.Nanjudia claimed the reimbursement of rail freight from Porbandar to Visnagar through Gujarat State Ware Housing Corporation, Ahmedabad, as the rates of the cement paid were, for destination namely, Visnagar. On 31.3.1982, the Gujarat State Ware Housing Corporation, Ahmedabad had asked the then Executive Engineer for submitting the details for reimbursement of the rail freight from Porbandar to Visnagar in the prescribed proforma. That Mr. K.Nanjudia appears to have not replied to the said letter dated 31.3.1982. According to the petitioner, the order for cement, making of payment being the price of the said cement and transporting the said cement from Porbandar to Visnagar by road, making the payment to the transporter for transporting the cement by road from Porbandar to Visnagar was done by Mr. K.Nanjudia who was the Executive Engineer at the relevant time. According to the petitioner, even making of claim for reimbursement for rail freight of the cement from Porbandar to Visnagar through Gujarat State Ware Housing Corporation, Ahmedabad by letter dated 20.3.1982 was also made by Mr. K.Nanjudia. On that occasion the petitioner was not at all in picture. On 8.6.1984 Mr. K.Nanjudia was transferred, and the petitioner was transferred and posted in place of Mr. K.Nanjudia as Executive Engineer, Dharoi Canal Division No.1, Visnagar. In January, 1985, it was brought to the notice of the petitioner that the above referred claim for reimbursement was pending. The petitioner immediately took up this issue on top priority basis and without wasting any time, the petitioner gathered all the necessary information and submitted the information in prescribed proforma to Gujarat State Ware

Housing Corporation on 29.1.1985. Ultimately, the reimbursement was received in full by the State Government vide Cheque No. 377163, dated 2.11.1998 for Rs.89,527.00. Then, according to the petitioner, the decision which has been taken by Mr.K.Nanjudia to transport the cement not by railway but by road which having a loss to the State Government because there is a difference in the freight rate of transporting the cement by road and railway freight, therefore, according to him this being a difference but not the loss caused to the State Government. According to the rules, State Government is entitled the rail freight and not the transportation charge by road. Therefore, Central Government has sanctioned the amount of Rs,89,527.00. Thereafter, on 8.3.1990, after a period of 5 years, a show-cause notice was served to the petitioner alleging that the claim for reimbursement was not made by the petitioner within the prescribed time limit. The reply was submitted by the petitioner on 16.5.1990. Thereafter nothing further has been produced by the respondent. But on 4.12.1998, a charge sheet was served to the petitioner after a period of 18 years from the date of the incident which was replied by the petitioner. After giving reply to the chargesheet denying the allegations made by the respondent, the respondent has passed a punishment order dated 20.2.1999 without holding any departmental inquiry and without giving any further opportunity to the petitioner. On what basis the authority has come to the conclusion that charge levelled against the petitioner in charge sheet has been found to be proved; for that no reasons have been given by the respondent and it amounts to non-application of mind on the part of the respondent, therefore, on all these grounds, the order of punishment has been challenged.

4. Learned AGP Mr. N.D.Gohil appearing on behalf of the respondent has submitted that this being a minor misconduct of lack of supervision and negligence on the part of the petitioner, therefore, initially a show-cause notice was served which was replied by the petitioner and thereafter, according to the rules charge sheet was served and same was replied by the petitioner and ultimately the authority found that there was some negligence on the part of the petitioner, therefore, only minor punishment of Rs.5000.00 has been imposed to recover from the salary of the petitioner. Therefore, there is nothing wrong in passing such order and to adopt the formal procedure by giving opportunity to the petitioner in respect of the allegation whether he wants to say something or not, therefore, according to him detailed inquiry is not necessary, therefore, authority

has rightly passed an order of imposing punishment by order dated 20.2.1999

5. I have considered the submissions made by both the learned advocates. Affidavit-in-reply has not been filed by the respondent. It is also not in dispute that when the incident had occurred, on that occasion, petitioner was not working as Executive Engineer in place of Mr. K.Nanjudia. The order was placed by Mr. K.Nanjudia and decision was taken by him, instead of demanding the cement through Railway, he decided the cement to be brought to Visnagar by transportation, means by road. That was his decision and ultimately, payment was made by him Rs.1,46,834.00. The only allegation is that reimbursement was not put up in time but, at the relevant time petitioner was not there and therefore, it was the duty of Mr. K.Nanjudia who was incharge as Executive Engineer for the relevant period. Petitioner was transferred on 8.6.1984 and remained on the said post and placed up to 31.1.1985. The averments made in the petition suggests that after he was transferred at the place where Mr. Nanjudia was working on 8.61984 he took up the matter immediately with the Central Government and ultimately he received the reimbursement claim of Rs. 89,527.00 from the Central Government. The loss which has been presumed by the department is not due to the decision of the petitioner but undisputedly, it was the decision of Mr. Nanjudia to bring the cement from Porbandar to Visnagar by way of transportation, that is by road, that was having a difference of amount of fare by road and claim was sanctioned by the Central Government which is under the Rules available to the State Government by railway freight. Therefore, actually petitioner was not at all in picture when the decision was taken to bring the cement from Porbandar to Visnagar by road. Effective steps have been taken after his transfer on 8.6.1984 which resulted into receiving the amount of Rs.89,527.00 on 2.11.1998. Therefore, prima facie, looking to the averments and order itself petitioner was not responsible.

6. Apart from the above facts, I am not reappreciating the evidence whatever with the department but it is necessary to note the legal aspect of the matter. In respect of the incident of 16.5.1990 one show-cause notice was served to the petitioner which was replied by him. Thereafter chapter remained as it is for a period of at least more than 8 years and nothing was proceeded further on the basis of the show-cause notice dated 16.5.1990. There is no letter or decision taken by the respondent after receiving the reply in respect to the show-cause notice from the petitioner, whether they

were satisfied or not, but, instead of that, straightway a chargesheet was served dated 4.12.1998 to the petitioner which was replied by the petitioner on 5.1.1999 and immediately, the order of punishment has been passed. I have perused the punishment order which referred the reply from the petitioner received by the department but there is no discussion or reason given by the respondent authority that how the reply given by the petitioner is not accepted by the department. There is no discussion at all about defence which has been taken by the petitioner that he has not committed any misconduct as alleged in the chargesheet. Therefore, considering the order itself, it is unreasoned order not based upon the departmental inquiry but a straightway order of punishment has been passed by the respondent after receiving reply on 5.1.1999 from the petitioner. Therefore, in such circumstances, it is the duty of the respondent authority to pass reasoned order while considering the defence of the petitioner whether it has been accepted or not and if it is not, then what are the reasons for that. There is no reason. Apparently, there is no application of mind by the authority and straightway the punishment order has been passed, therefore, it is contrary to the provisions of natural justice and being an arbitrary order passed by the respondent.

7. In view these facts, as perused from from the punishment order which is dated 20.2.1999, in similar situation, the view taken by the Apex Court in the case of ANIL KUMAR V. PRESIDING OFFICER AND OTHERS, AIR 1985, SC 1121, the Apex Court has discussed this aspect that; "where a disciplinary inquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the principles of natural justice, the minimum expectation is that the report must be a reasoned one. The Court then may not enter into the adequacy of sufficiency of evidence. But where the evidence is annexed to an order-sheet and no correlation is established between the two showing application of mind, we are constrained to observe that it is not an enquiry report at all. Therefore, there was no enquiry in this case worth the name and the order of termination based on such proceeding disclosing non-application of mind would be unsustainable". The Apex Court has further observed in paragraph 5 of the said decision that; "An enquiry report in a quasi-judicial enquiry must show the reasons for the conclusion. It cannot be an ipse dixit of the Enquiry Officer. It has to be a speaking order in the sense that the conclusion is supported by reasons".

8. Before the case of the Apex Court, the Enquiry Officer has not discussed the evidence and merely referring the name of witnesses he come to straightway conclusion but he has not assigned any single reason why the evidence produced by the employee did not appeal to him or was considered not credit worthy. He did not permit a peep into his mind as to why the evidence produced by the management appealed to him in preference to the evidence produced by the employee. This being the similar position here in the facts of this case, that initially show-cause notice was served on 16.5.1990 and it was annexed by the petitioner. No further steps have been taken and department waited up to 8 years and on 4.12.1998 charge sheet was served which was replied on 5.1.1999 by the petitioner without discussing any defence of the petitioner and question that defence is proper or not straightway the punishment order has been passed, therefore, according to my opinion, the punishment order is not speaking one, unreasoned order and contrary to the principle of natural justice and it also non-application of mind required to be quashed and set aside.

9. In result, present petition is allowed. Order dated 20.2.1999 passed by the respondent authority is hereby quashed and set aside with a direction to the respondent to pay the amount of Rs.5000.00 to the petitioner within a period of one week from the date of receiving the copy of this order. Rule is made absolute accordingly. No order as to costs.

(H.K.Rathod,J)

Jayanti*